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FM AMCONSUL HONG KONG
TO RUEHC/SECSTATE WASHDC IMMEDIATE 5010
INFO RUCPDO/DEPT OF COMMERCE WASHDC
RUEHOO/CHINA POSTS COLLECTIVE

UNCLAS SECTION 01 OF 02 HONG KONG 000714

SIPDIS

SENSITIVE
SIPDIS

STATE FOR EB/IPE CLACROSSE, EB/TPP EFELSING, AND EAP/CM
KBENNETT
STATE PLS PASS TO USTR JCHOE-GROVES
COMMERCE FOR JBOGER
COMMERCE PLS PASS TO USPTO JURBAN AND LOC STEPP

E.O. 12958: N/A
TAGS: [KIPR](#) [ETRD](#) [EIND](#) [MC](#)
SUBJECT: Special 301 Recommendation for Macau

Summary and Recommendation for Macau

11. (SBU) Summary: Post recommends that Macau not be placed on any Special 301 list in the 2006 cycle due to its consistent and steady IPR performance. However, Post remains concerned about the rampant and flagrant TV signal piracy in Macau and the Government of Macau's (GOM) distinct lack of progress in addressing this issue. Of secondary concern is end-use piracy of software. Aside from these issues, however, our assessment is that the GOM maintained an effective IPR regime in 2005. The Macau Customs Intellectual Property Department (IPD) was awarded a Distinguished Service Medal by Macau Chief Executive (CE) Edmund Ho for its efforts to crack down on optical disk piracy. End Summary.

Strong Enforcement Efforts Bearing Fruit?

12. (SBU) The overall number of counterfeit and pirated items seized by Macau Customs at SAR borders in 2005 dropped when compared to 2004 figures. Macau Customs asserts that this reflects a lower level of infringing activity due to their previous enforcement efforts. In 2005, Macau Customs seized 4,547 counterfeit items of various types at its borders, a drop of 46.4 percent from 2004. Most of these goods were brought in from mainland China.

13. (SBU) Within Macau, however, industry representatives cite anecdotal evidence that optical disk manufacturers are once again ramping up operations. GOM figures appear to bolster this perception. In 2004, Macau Customs seized a total of 15,522 pirated optical disks. In 2005, this number had increased to 19,816 disks, an increase of 27.7 percent. The government conducted 15 raids and arrested nine people in conjunction with optical disk piracy last year. Four of the nine were convicted and given suspended sentences of up to 21 months in prison and fines of up to 8,000 patacas (USD 1,000), both of which represent a trend towards stricter sentencing of optical disk counterfeiters. They were given fines and/or suspended sentences. The other cases are still being prosecuted.

TV Signal Piracy

14. (SBU) While the GOM has been successful at tackling optical disk piracy, theft of TV signals continues with virtual

impunity. Macau Cable estimates that pirated signals make up more than 90 percent of the Macau market, making it one of the worst places in Asia for TV signal piracy.

15. (SBU) In 2000, Macau Cable began operations after signing a contract with the GOM for the exclusive right to provide pay TV cable service in Macau. Almost immediately, ten to twelve small operators, called "antenna companies," began engaging in widespread signal piracy, illegally hooking up thousands of Macau households and businesses to as many as 50 different channels, including many U.S. providers. These companies can charge as little as one US dollar per home, because they pay nothing to the content owners or the GOM (taxes, licenses).

16. (SBU) On August 18, 2005, the GOM's Office for the Development of Telecommunications and Information Technology announced that starting on September 12, 2005 it would send staff to check antenna companies, satellite network operators, and residential buildings for unlicensed receivers. Offenders were to be fined between 500 to 20,000 patacas (between 63 - 2,500 USD), with repeat offenders to be fined double those amounts. However, the GOM received a furious backlash from the infringing antenna companies when they threatened to cut off all service, including legitimate broadcasts of Hong Kong and regional television programs, to the 90 percent of the Macau households that they service.

17. (SBU) Faced with a growing public uproar about the enforcement action, CE Edmund Ho declared on September 3, 2005 that the issue was still "open for discussion" and delayed the enforcement action for two months to give the GOM a chance to carry out public outreach on the importance of IP protection. As of late February 2006, the GOM had yet to shift from its public outreach efforts into actual enforcement actions. Macau

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Cable representatives say that the GOM now seems to be refocusing its efforts on pushing Macau Cable to purchase the infringing antenna companies. Although Macau Cable is not against the idea of purchasing the problem broadcasters, the company remains concerned about the GOM's acquiescence to the business practices of the antenna companies and the detrimental effect this action has on the overall IPR protection regime in Macau.

End-Use Piracy

18. (SBU) Of secondary concern is the lack of GOM action on "end-user" piracy and "channel" piracy (counterfeit software and pre-loaded unlicensed software on new computers). At the heart of the matter is Macau's ambiguous copyright law, which has not yet been used in court to address these forms of piracy. Software industry representatives have argued that because the law is vague, law enforcement authorities are not empowered to file criminal charges. In December 2005, Macau Customs conducted a software business end-user piracy raid on a small company and found several unlicensed copies of business software in use. Although the scale of the action was small, the GOM is considering using this action as a "test case" for applying the copyright law to end-user piracy violations.

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